

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KHIRY JAMAL GATES,

Plaintiff,

Case No. 19-cv-1525-pp

v.

EUTECTIC CASTOLIN,
and JOHNNY DANIELS,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL (DKT. NO. 26)

On March 31, 2021, the defendants filed a Rule 7(h) expedited, non-dispositive motion to compel discovery. Dkt. No. 26. Under Federal Rule of Civil Procedure 37, the defendants ask the court to compel the plaintiff to respond to the defendant's discovery requests and award attorneys' fees and costs for bringing this motion. Id. at 1. The defendants also filed a declaration by their attorney, Kayla McCann, in support of the motion. Dkt. No. 27. The plaintiff, who is representing himself, has not responded to the motion.

I. Background

The court has determined that the amended complaint states a claim for employment discrimination based on race under Title VII 42 U.S.C. §1981. Dkt. No. 11 at 11-12. The court has concluded that the plaintiff had stated claims for both hostile work environment and retaliation. Id. The plaintiff alleged that he was the recipient of unwelcome harassment by defendant, Daniels, his supervisor at Eutectic Castolin. Dkt. No. 10 at 2; dkt. no. 11 at 9-10. He

alleged that the harassment was verbal, primarily consisting of abusive language including derogatory terms for members of the plaintiff's race. Dkt. No. 11 at 9-10. The plaintiff's claim of retaliation is based on Daniels's conduct after the plaintiff allegedly told Daniels that the plaintiff would be filing a harassment suit. *Id.* at 11-12. According to the plaintiff, Daniels decided to fire the plaintiff after the plaintiff threatened legal action for the alleged harassment. Dkt. No. 10 at 4; dkt. no. 11 at 11-12.

On January 4, 2021, the court issued a scheduling order requiring the parties to complete discovery by June 1, 2021. Dkt. No. 23. On February 1, 2021, the defendants served their discovery requests on the plaintiff by both mail and email.¹ Dkt. No. 26 at 1. The requests included a set of interrogatories and requests for production of documents. *Id.* The federal rules provide a party thirty days to respond to interrogatories and document requests, meaning that the plaintiff's responses were due March 3, 2021. Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A)). The defendants stated that the plaintiff did not respond to the discovery requests by March 3, dkt. no. 26 at 1, and still had not responded as of the date they filed the motion (March 31, 2021), dkt. no. 27 at ¶12.

II. Motion to Compel

The defendants ask the court to compel the plaintiff to respond to their discovery requests. Dkt. No. 26. The defendants assert that they attempted to

¹ The defendants stated that they previously had corresponded successfully with the plaintiff at the email address they used.

meet and confer with the plaintiff five times between March 15 and March 23, 2021 without success. Dkt. No. 26 at 2. The plaintiff did not respond to numerous telephone calls or emails. *Id.*

The defendants seek responses to their first set of interrogatories and first request for production of documents. Because the plaintiff did not respond to the defendant's motion, the court has no information about why he has not responded to these discovery requests. The court will grant the defendants' motion and require the plaintiff to respond to the defendants' discovery requests with full and complete responses by a date certain. If the plaintiff does not respond to the defendant's discovery requests by that date, the defendants may ask the court for whatever sanctions they believe may be appropriate.

III. Costs

The defendants have asked the court to award them attorneys' fees and costs for bringing this motion. The court is reluctant to award fees and costs without more information. The court last heard directly from the plaintiff on March 4, 2020, when he filed his amended complaint. Dkt. No. 10. On December 31, 2020, defense counsel filed a joint Rule 26(f) scheduling plan, dkt. no. 22, so the court assumes that at some point prior to that date, the plaintiff had been in touch with defense counsel. But the court has heard nothing from the plaintiff in the four months since then, and the defendants have indicated that they did not receive responses from the plaintiff by March 3 and were not able to contact him between March 15 and March 23, 2021.

Perhaps the plaintiff no longer wishes to pursue this lawsuit. Perhaps he has been ill. Perhaps he is ignoring the defendants. Without knowing why the plaintiff has not responded to the defendants' legitimate discovery demands, the court is not in a position to determine whether it ought to sanction the plaintiff by requiring him to pay the defendants' attorneys' fees and costs. The court will deny the defendants' request for costs and fees without prejudice. If the defendants can demonstrate that the plaintiff knowingly and without good cause refused to comply with their discovery demands, they may renew their request for costs and fees.

VI. Conclusion

The court **GRANTS** the defendants' motion to compel. Dkt. No. 26.

The court **ORDERS** that by the end of the day on **May 21, 2021**, the plaintiff must send the defendants full responses to their February 1, 2021 discovery demands. If the defendants do not receive responses to their discovery demands by the end of the day on May 21, 2021, they may notify the court and ask for whatever sanctions they believe may be appropriate.

The court **ORDERS** that the plaintiff *must not* file his responses to the discovery demands with the court. The court **ORDERS** that the plaintiff must send his responses to the defendants' counsel:

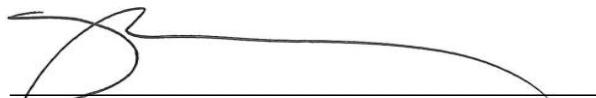
Kayla A. McCann
Ogletree Deakins Nash Smoak & Stewart, PC
1243 N. 10th St., Suite 200
Milwaukee, WI 53205
Kayla.mccann@ogletree.com

It is the plaintiff's responsibility to notify the court of any change of address. Failure to do so could result in orders or other information not being timely delivered, which could impact the plaintiff's legal rights.

The court **DENIES WITHOUT PREJUDICE** the defendants' request for an award of attorneys' fees and costs. Dkt. No. 26.

Dated in Milwaukee, Wisconsin this 30th day of April, 2021.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge